

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

ELECTRONICALLY FILED

**WEST VIRGINIA
HIGHLANDS CONSERVANCY,
APPALACHIAN VOICES,
and SIERRA CLUB,**

Plaintiffs,

v.

CIVIL ACTION NO. 3:19-cv-0573

LEXINGTON COAL COMPANY, LLC

Defendant.

**AFFIDAVIT OF KERMIT E. FINCHAM, Jr. P.E. P.S.,
VICE PRESIDENT OF ENGINEERING, LEXINGTON COAL COMPANY, LLC**

*** * * * ***

Affiant, Kermit E. Fincham, Jr. P.E. P.S., Vice-President of Engineering, Lexington Coal Company, LLC, on behalf of Lexington Coal Company, LLC (“Lexington”) and in support of its Compliance with Court’s Memorandum Opinion and Order dated May 18, 2022 (the “Court’s Order”), respectfully provides as follows:

1. I am employed with Lexington as its Vice President of Engineering.
2. I am a licensed Professional Engineer and a licensed Professional Surveyor in the State of West Virginia.
3. I have over twenty-five (25) years of experience working with water treatment technologies in the State of West Virginia and over ten (10) years of experience specifically related to selenium discharges.
4. I am knowledgeable about selenium issues and treatment.

5. As such, I am authorized and qualified to provide this Affidavit and I have personal knowledge of the facts contained therein.

6. With respect to Item 1 of the Court's Order, to submit a plan to come into compliance with the CWA and SMCRA within 30 days; Permit WV1020579: With regard to Outlet 005: I provide that this outlet is currently in compliance with the WVDEP Permit with regards to approved Modification 15 with Report Only Limits, due to the implementation of Chronic Aquatic Life Standards testing.

With regard to Outlet 012: I provide that this outlet is currently in compliance with the WVDEP permit with regards to approved Modification 15 with Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing.

With regard to Outlet 031: I provide that this outlet is not in compliance with the WVDEP permit with regards to approved Modification 15 with Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing. Therefore, Lexington shall revert to the original approved WVDEP plan from Modification 12 that will entail the construction of a Biochemical Reactor System, as shown and certified on the included plan. Construction has already commenced with approximately 40% of the project completed. A GANNT chart of the projected timeline is included.

With regard to Outlet 045: I provide that this outlet is currently in compliance with the WVDEP permit with regards to approved Modification 16 with

Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing.

With regard to Outlet 047: I provide that this outlet is currently in compliance with the WVDEP permit with regards to approved Modification 16 with Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing.

With regard to Permit WV1020579: Outlet 002: I provide that this outlet is currently in compliance with the WVDEP permit with regards to approved Modification 29 with Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing.

With regard to Outlet 017: I provide that this outlet is currently in compliance with the WVDEP permit with regards to approved Modification 30 with Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing.

With regard to Outlet 019: I provide that this outlet is not in compliance with the WVDEP permit with regards to approved Modification 29 with Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing. Therefore, Lexington shall revert to the original approved WVDEP plan from Modification 28 that will entail the construction of a Biochemical Reactor System, as shown and certified on the included plan. Construction has been completed on this system and reactivation is scheduled. A GANNT chart of the projected timeline is included.

With regard to Outlet 024: I provide that this outlet is currently in compliance with the WVDEP permit with regards to approved Modification 30 with Report Only Limits due to the implementation of Chronic Aquatic Life Standards testing.

7. With regard to Item 2 of the Court's Order: Achieve compliance with selenium limits no later than a year from the date of the plan submission. I provide that compliance with selenium limits will be achieved by May 27, 2023 through the installation of the Biochemical Reactor Systems.
8. With regard to Item 3 of the Court's Order: Achieve compliance with West Virginia ionic pollution standards as soon as possible. I provide that compliance with West Virginia ionic pollution standards will be achieved as soon as possible through the use of my professional judgment, as well as through the use of various third-party environmental consultants.
9. With regard to Item 4 of the Court's Order: Include specific and enforceable interim milestones no longer than one year apart. Please review the attached GANNT chart I created for interim milestones.
10. This Affidavit provides that to the best of my professional judgment, compliance with the WVDEP approved selenium limits will be obtained within one year and ionic pollution restrictions will be met as soon as possible.
11. I have had engineering oversight for systems' construction and successful implementation involving two separate operations in the Appalachian region located in Boone County, West Virginia. Although due to my professional

responsibility, the names of these sites must remain confidential, I personally worked as the professional engineer for over 25 years, and I have implemented and overseen two such locations.

12. I created the GANNT chart that is made part of this Affidavit.
13. And Lexington shall submit monthly reports to both this Court and to the Plaintiffs describing its process and the plan moving forward.
14. Further the Affiant sayeth naught.

KERMIT E. FINCHAM, Jr. P.E. P.S.



COMMONWEALTH OF KENTUCKY)
)
COUNTY OF PIKE)

Personally appeared before me, the undersigned Kenneth E. Finckham, with whom I am personally acquainted, further acknowledged that he executed this Affidavit with full authority and for the purpose contained herein and did further state that all matters set forth therein are true and correct. I am a duly registered Notary Public in and for said County and State.

Witness my hand this the 31st day of May, 2022.

Notary Public: _____
My Commission Expires: 3-21-26

